

UNCLASSIFIED

TESTIMONY ON HR 1013

by

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April 1, 1987

Mr. Chairman:

You have asked me to comment on a draft bill HR 1013 which concerns strengthening the system of congressional oversight of intelligence activities. I am happy to do that. I approach the question with three key points in mind.

First, the bill is known as the Stokes-Boland bill. These are two men with whom I've had the privilege of working closely in connection with congressional oversight of intelligence. I have a deep respect for the constructive way in which they each have consistently approached the question of oversight. Any bill which they sponsor has to be taken with great seriousness.

Second, I work from the premise that rigorous congressional oversight of

intelligence activities is an essential strength of our intelligence system.

We simply can not have any element of our government that is not held accountable to someone. So much of our intelligence activities absolutely must be kept secret, that only the Congress can safely provide that accountability.

Thirdly, I believe that the intelligence oversight process has not functioned adequately over the past six years. The introduction of this bill alone would appear to substantiate that premise. It is my observation from the outside, that the cause of the breakdown in oversight has been a strong fear from the Executive Branch that oversight had, or would become, dangerously intrusive.

The challenge today is how to restore a level of oversight adequate to provide accountability without endangering the vital secrecy of the intelligence process. The proposed bill would be a step in that direction by ensuring that the Congress had an immediate role in overseeing any covert activities undertaken by the Intelligence Community. With an exception I will note below, I believe it is highly desirable that the intelligence oversight committees of the Congress be informed of such activities within the 48 hour limit proposed by the bill. The question is, is such a provision of law the best way to ensure that the Congress will be informed within at least 48 hours of the signing of a "finding" by the President?

1986 regarding CIA support in facilitating the sale of arms to Iran. The fact that notification was not given to the Congress of that finding stands starkly against a written agreement made between the Director of Central Intelligence and the Senate Select Committee in the spring of 1984. In the wake of a controversy over whether the Congress was adequately informed about the mining of the harbors of Nicaragua, the Director of Central Intelligence purportedly pledged in a written document that had the approval of the President to ensure that the Congress was informed of all significant future intelligence activities. It would appear reasonable to consider the CIA's support for the sale of arms to Iran to be a significant activity. In short, the written pledge of the Director in the spring of 1984 was not sufficient to ensure that the Congress was informed in January of 1986. ~~I find that HR 1613 has no more teeth in it as far as intelligence and concerns than did the written agreement between the DCI and the Senate Select Committee.~~

I would suggest, then, that the establishment and maintenance of an attitude of cooperation and goodwill between the executive branch and the two congressional committees on intelligence may be more important than written agreements or provisions of law. The essential question is how to restore mutual trust and confidence. We are very fortunate that on March 4th in his address to the nation on television, President Reagan stated unequivocally that his administration has come to a new view that there must be congressional oversight. I quote, "I am also determined to make the

the Congress will be followed, not only in the letter, but in the spirit." I am sure that this committee, as well as all of us who appreciate the vital importance of oversight, are delighted with this new Presidential instruction to the leaders of our intelligence agencies. The proof of the pudding, of course, remains in the eating; that is, the actual cooperation of those agencies in the oversight process.

Let me suggest that there might be some advantage in allowing the executive to prove itself in this regard without the Congress first tightening the legal screws. The professionals in the world of intelligence have come a long way in the last eleven years in adapting to the idea of sharing secrets with the Congress. Still, they are understandably alarmed at what they fear may be progressively greater and greater intrusion into their secrets, to the point where some very high price may be paid if there is an inadvertent disclosure. I am suggesting that at this particular moment, discretion on the part of the Congress may be the better part of valor. While the intelligence community is adjusting to the new Presidential directive, it may be best not to sound any more alarm than necessary, especially not with a provision of law that may well not be effective anyway if there is not goodwill in addition.

In particular, I would suggest that there is one case in which notification to the Congress within 48 hours poses a genuine concern to the intelligence professionals. This is when a Chief of Intelligence finds it desirable to ask an American employee of the Intelligence Community or a foreign agent to put his or her life at risk in some covert activity. I did

individual in the eye and tell him or her that I was going to discuss this life-threatening mission with even half a dozen people in the CIA, who did not absolutely have to know, that is people who were not necessarily involved in supporting the activity. It would be especially difficult to tell people of this type that you are informing others purely for the sake of checking on whether you yourself are doing the right thing or not. People who are willing to lay their lives on the line want to believe they are working for someone who knows what he is doing, not someone who may change his mind at some critical point in the operation because of what his advisors tell him.

Let me describe the three instances to which I referred. All concern our efforts in 1979-1980 to obtain the release of the Americans being held hostage in Teheran.

First, in 1980 the CIA facilitated the successful escape from Teheran of the six Americans who were hidden in the Canadian embassy. This involved sending a CIA person into Teheran at high risk to his life to engineer the departure.

Second, when our military was searching for a way to refuel the helicopters that were to fly to Teheran to rescue our hostages there, CIA personnel flew a light aircraft into the Iranian desert. They landed there by the light of the full moon and took core samples of the soil to prove that it was a suitable landing strip for conducting the necessary refueling operation.

the rescue force would find on its arrival and to purchase the trucks to transport the men from their helicopters to the embassy. Each such trip was a highly risky adventure and any hint that we were doing such a thing right through Mehrabad airport would almost certainly have caught one of our people in the Iranian noose.

I sincerely believe there will be more instances in the future when Directors of Central Intelligence will want to commission acts similar to the three I have just described. It would be a great struggle of conscience for a DCI in deciding whether he or she could make the kind of requests that I did of these individuals and also comply with a 48 hour rule for notifying the intelligence committees of Congress. I believe instances like these three will be infrequent. I also think the odds are high that there will be operations with which the Congress would agree if it knew. There is no guarantee of that, however.

Here, though, we come back to the question of trust and confidence. I would hope that a President who endorsed Congressional oversight, as President Reagan has now done, would not undertake a life-threatening covert action that was also a major change in foreign policy without informing the Congress. The balance between risking human life by telling even one person who does not need to know, on the one hand, and not following democratic procedures for accountability, on the other, is a delicate one. In no

instance is it ever going to be an absolutely cut and dried case and there can be no notification of Congress without undue risk to an individual's life. I have said many times that I have confidence in the ability of the Congress to keep secrets, but as I have mentioned already, it is not just a question of notifying members of Congress. It is a question of notifying anyone who is not necessarily involved. It also will never be black and white that having accountability through informing the Congress in advance, or within 48 hours, is absolutely essential to preserving our democratic procedures. I believe accountability is, indeed, important, but there has to be some room for flexibility to notify the Congress promptly in most instances, but not in all. I recommend leaving the laws sufficiently flexible to provide for that.

One other recent development will minimize the risks of delayed notification to the Congress. That is another new policy which President Reagan enunciated in his speech of March 4th. He said: "I've also directed that any covert activity be in support of clear policy objectives and in compliance with American values. I expect a covert policy that if Americans saw it on the front page of their newspaper, they'd say, "'That makes sense.'"

That pledge not only makes sense, I believe it gives greater assurance that almost all covert actions conceived by the executive will be acceptable to the Congress.

intelligence has broken down, but that is not entirely the fault of the executive. The Congress, the media, and the public were well aware in August 1985 that Lieutenant Colonel Oliver North was engaged in activities in support of the contras. Whether or not they were legal activities was unclear, but there was little question in anyone's mind that Colonel North was deliberately attempting to circumvent the spirit of the law governing support to the contras. Thus, the oversight process did not work at a time the President needed the advice of the Congress. Why he did not get that advice, despite the warning signals we all saw, you know far better than I. I would only suggest that it is not adequate to say that Mr. McFarlane or others misled the Congress. If that were sufficient excuse, the very oversight process would not be worth the attention we are giving to it.

There is, then, some danger in my view that the public and the Congress may look on HR 1013 as all the action necessary by the Congress to correct the recently disclosed shortcomings in the oversight process. I would hope Congress would concentrate instead on measures to make its conduct over oversight more rigorous and on steps to improve relations between the Intelligence Community and the Congress. We need to return to conditions where we can conduct oversight in a cooperative and constructive manner.

Thank you, Mr. Chairman.